ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 2732 By: Renegar of the House

and

Gumm of the Senate

An Act relating to professions and occupations; amending 59 O.S. 2001, Section 328.49, as amended by Section 10, Chapter 172, O.S.L. 2003 (59 O.S. Supp. 2007, Section 328.49), which relates to dentistry; * * * * amending 59 O.S. 2001, Section 491, as amended by Section 3, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2007, Section 491), which relates to the practice of medicine or surgery; * * * * amending 59 O.S. 2001, Section 638, as amended by Section 12, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2007, Section 638), which relates to the Oklahoma Osteopathic Medicine Act; * * * * amending 59 O.S. 2001, Section 698.26, as amended by Section 7, Chapter 172, O.S.L. 2002 (59 O.S. Supp. 2007, Section 698.26), which relates to the unauthorized practice of veterinary medicine; providing penalty for permitting or directing violation; and providing an effective date.

AUTHOR: Add the following Senate Coauthor: Leftwich

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"[professions and occupations - dentistry -

increasing penalty for unlawful practice –

codification -

effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2001, Section 328.49, as amended by Section 10, Chapter 172, O.S.L. 2003 (59 O.S. Supp. 2007, Section 328.49), is amended to read as follows:

Section 328.49 A. The Board of Dentistry shall be responsible for the enforcement of the provisions of the State Dental Act against all persons who are in violation thereof, including, but not limited to, individuals who ~~are practicing~~ practice or ~~attempting~~ attempt to practice dentistry or dental hygiene without proper authorization from the Board.

B. 1. It shall be unlawful for any person, except a licensed dentist, to:

a. practice or attempt to practice dentistry,

b. hold oneself out to the public as a dentist or as a person who practices dentistry, or

c. employ or use the words "Doctor" or "Dentist", or the letters "D.D.S." or "D.M.D.", or any modification or derivative thereof, when such use is intended to give the impression that the person is a dentist.

2. It shall be unlawful for any person, except a registered dental hygienist, to:

a. practice or attempt to practice dental hygiene,

b. hold oneself out to the public as a dental hygienist or as a person who practices dental hygiene, or

c. employ or use the words "Registered Dental Hygienist", or the letters "R.D.H.", or any modification or derivative thereof, when such use is intended to give the impression that the person is a dental hygienist.

3. It shall be unlawful for any person to:

a. give false or fraudulent evidence or information to the Board in an attempt to obtain any license or permit from the Board, or

b. aid or abet another person in violation of ~~this subsection~~ the State Dental Act.

4. Each day ~~of~~ a person is in violation of any provision of this subsection shall constitute a separate ~~and distinct~~ criminal offense and, in addition, the district attorney may file a separate charge of medical battery for each person who is injured as a result of treatment performed in violation of this subsection.

C. 1. If a person violates any of the provisions of subsection B of this section, the Board ~~may~~ shall request ~~that~~ the district attorney of the county in which ~~such~~ the violation is ~~believed~~ alleged to have occurred to bring a criminal action in that county against the person. A duplicate copy of the Board's request shall be sent to the Attorney General of this state.

2. Any person who violates any of the provisions of paragraph 1 or 3 of subsection B of this section, upon conviction ~~thereof~~, shall be guilty of a ~~misdemeanor and shall be punished as follows:~~

~~a.~~ ~~for a first offense,~~ felony punishable by a fine ~~of~~ in an amount not less than ~~Five Hundred Dollars ($500.00)~~ One Thousand Dollars ($1,000.00) nor more than ~~One Thousand Five Hundred Dollars ($1,500.00)~~ Ten Thousand Dollars ($10,000.00), or by imprisonment in the county jail for a term not more than ~~thirty (30) days~~ one (1) year or imprisonment in the custody of the Department of Corrections for not more than four (4) years, or by both such fine and imprisonment~~,~~

~~b.~~ ~~for a second offense, by a fine of not less than One Thousand Five Hundred Dollars ($1,500.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00), or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment, or~~

~~c.~~ ~~for a third or subsequent offense, by a fine of not less than Two Thousand Five Hundred Dollars ($2,500.00) nor more than Five Thousand Dollars ($5,000.00), or by imprisonment in the county jail for not more than one hundred eighty (180) days, or by both such fine and imprisonment~~. Any person who

violates any of the provisions of paragraph 2 of subsection B of this section, upon conviction, shall be guilty of a misdemeanor punishable by a fine in an amount not less than Five Hundred Dollars ($500.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00), or by imprisonment in the county jail for a term not more than ninety (90) days, or by both such fine and imprisonment. Any second or subsequent violation of paragraph 2 of subsection B of this section, upon conviction, shall be a felony punishable by a fine in an amount not less than One Thousand Five Hundred Dollars ($1,500.00) nor more than Five Thousand Dollars ($5,000.00), or by imprisonment in the county jail for a term not more than one (1) year or imprisonment in the custody of the Department of Corrections for not more than two (2) years, or by both such fine and imprisonment.

D. The Board may initiate a civil action, pursuant to Chapter 24 of Title 12 of the Oklahoma Statutes, seeking a temporary restraining order or injunction, without bond, commanding a person to refrain from engaging in conduct which constitutes a violation of any of the provisions of subsection B of this section. In ~~an~~ a civil action filed pursuant to this subsection, the prevailing party shall be entitled to recover costs and reasonable attorney fees.

E. In addition to any other penalties provided herein, any person found guilty of contempt of court by reason of the violation of any injunction prohibiting the unlicensed practice of dentistry now in effect or hereafter entered pursuant to any provision of the State Dental Act or any preceding state dental act, shall be punished by imprisonment in the county jail for a term not less than thirty (30) days nor more than one (1) year, and by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00). The court may also require the defendant to furnish a good and sufficient bond in a penal sum to be set by the court, not less than One Thousand Dollars ($1,000.00), which shall be conditioned upon future compliance in all particulars with the injunction entered, and in the event of failure of the defendant to furnish such bond when so ordered, the defendant shall be confined in the county jail pending compliance therewith. Such bond shall be mandatory as to any person hereafter found guilty of a second contempt of court for violation of any injunction entered pursuant to the State Dental Act, or any preceding state dental act.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 491, as amended by Section 3, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2007, Section 491), is amended to read as follows:

Section 491. A. 1. Every person before practicing medicine and surgery or any of the branches or departments of medicine and surgery, within the meaning of the Oklahoma Allopathic Medical and

Surgical Licensure and Supervision Act, within this state, must be in legal possession of the unrevoked license or certificate issued pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act.

2. Any person practicing in such manner within this state, who is not in the legal possession of ~~such~~ a license or certificate, shall, upon conviction ~~thereof~~, be guilty of a felony, ~~and shall, in any court having jurisdiction, be fined for:~~

~~a. the first offense in any sum not less than One Thousand Dollars ($1,000.00), and not more than Five Thousand Dollars ($5,000.00), and~~

~~b. any succeeding offense, as provided in subparagraph a of this paragraph, and in addition thereto, be imprisoned in a county jail for a period of time of not less than thirty (30) days, nor more than one hundred eighty (180) days~~

punishable by a fine in an amount not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00), or by imprisonment in the county jail for a term not more than one (1) year or imprisonment in the custody of the Department of Corrections for not more than four (4) years, or by both such fine and imprisonment.

3. ~~In all instances, each day's practice~~ Each day a person is in violation of any provision of this subsection shall constitute a

separate ~~and distinct~~ criminal offense and, in addition, the district attorney may file a separate charge of medical battery for each person who is injured as a result of treatment or surgery performed in violation of this subsection.

4. Any person who practices medicine and surgery or any of the branches or departments thereof without first complying with the provisions of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act shall, in addition to the other penalties provided therein, receive no compensation for such medical and surgical or branches or departments thereof services.

B. 1. If a license has been revoked or suspended pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act whether for disciplinary reasons or for failure to renew ~~such~~ the license, the State Board of Medical Licensure and Supervision may, subject to rules promulgated by the Board, assess and collect an administrative fine not to exceed Five Thousand Dollars ($5,000.00) for each day after revocation or suspension whether for disciplinary reasons or for failure to renew such license that the person practices medicine and surgery or any of the branches or departments thereof within this state.

2. Fines assessed shall be in addition to any criminal penalty provided pursuant to subsection A of this section.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 638, as amended by Section 12, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2007, Section 638), is amended to read as follows:

Section 638. A. Each of the following acts shall constitute a felony, punishable, upon conviction, by a fine of not less than One Thousand Dollars ($1,000.00) nor more than ~~Five Thousand Dollars ($5,000.00)~~ Ten Thousand Dollars ($10,000.00), or by imprisonment in the county jail for not ~~less than ninety (90) days nor~~ more than one (1) year or imprisonment in the custody of the Department of Corrections for not more than four (4) years, or by both such fine and imprisonment:

1. The practice of osteopathic medicine or attempt to practice osteopathic medicine without a license issued by the State Board of Osteopathic Examiners~~, and each visit, treatment, prescription, or attempted visit, treatment, or prescription shall constitute a separate and distinct offense~~;

2. Obtaining ~~of~~, or attempting to obtain, a license under the ~~provisions of this act, or obtaining~~ Oklahoma Osteopathic Medicine Act by fraud or false statements;

3. Obtaining, or attempting to obtain, money or any other thing of value, by fraudulent representation or false pretense;

~~3.~~ 4. Advertising as an osteopathic physician and surgeon, or practicing or attempting to practice osteopathic medicine under a

false, assumed, or fictitious name, or a name other than the real name; or

~~4.~~ 5. Allowing any person in the licensee's employment or control to practice as an osteopathic physician and surgeon when not actually licensed to do so.

B. Each day a person is in violation of any provision of subsection A of this section shall constitute a separate criminal offense and, in addition, the district attorney may file a separate charge of medical battery for each person who is injured as a result of treatment or surgery performed in violation of subsection A of this section.

C. Any person making any willfully false oath or affirmation whenever oath or affirmation is required by the Oklahoma Osteopathic Medicine Act shall be deemed guilty of the felony of perjury, and upon conviction, shall be punished as prescribed by the general laws of this state.

SECTION 4. AMENDATORY 59 O.S. 2001, Section 698.18, is amended to read as follows:

Section 698.18 A. It shall be unlawful for any person to practice or attempt to practice veterinary medicine without a current license or certificate issued pursuant to the Oklahoma Veterinary Practice Act, or to knowingly aid or abet another person in the unlicensed practice or attempted practice of veterinary medicine in this state.

B. Any person who violates~~, aids or abets in violating~~ any of the provisions of ~~the Oklahoma Veterinary Practice Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Five Hundred Dollars ($500.00) or not more than Two Thousand Five Hundred Dollars ($2,500.00), or by imprisonment in the county jail for not less than thirty (30) days, nor more than six (6) months, or by both such fine and imprisonment~~ subsection A of this section shall, upon conviction, be guilty of a felony punishable by a fine in an amount not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00), or by imprisonment in the county jail for a term not more than one (1) year or imprisonment in the custody of the Department of Corrections for not more than four (4) years, or by both such fine and imprisonment.

SECTION 5. AMENDATORY 59 O.S. 2001, Section 698.26, as amended by Section 7, Chapter 172, O.S.L. 2002 (59 O.S. Supp. 2007, Section 698.26), is amended to read as follows:

Section 698.26 A. ~~A~~ It is unlawful for a registered veterinary technician, veterinary technologist, nurse, veterinary assistant or other employee ~~shall not~~ to diagnose animal diseases, prescribe medical or surgical treatment, or perform as a surgeon and such acts shall constitute the unlawful practice of veterinary medicine as prohibited in Section 698.18 of this title.

B. It is unlawful for any person to assume the title of registered veterinary technician, or the abbreviation RVT, or any other words, letters, signs, or figures that might induce a person to believe that the person using the name is a registered veterinary technician, when in fact such person is not certified.

C. A registered veterinary technician may perform emergency treatments in a life saving situation in accordance with rules promulgated by the Board.

~~C. Any~~ D. Except as provided in Section 698.18 of this title, any person certified as a veterinary technician, veterinary technologist, veterinary nurse, or veterinary assistant who practices veterinary medicine contrary to the provisions of the Oklahoma Veterinary Practice Act, ~~violates,~~ or any person who aids~~,~~ or abets ~~such actions~~ another in the practice or attempted practice as a veterinary technician, veterinary technologist, veterinary nurse, or veterinary assistant without license or certification, or any person violating any provision of subsection B of this section, upon conviction ~~thereof~~, shall be guilty of a misdemeanor ~~and~~ punishable by a fine of not less than Five Hundred Dollars ($500.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00), or by imprisonment in the county jail for a term not less than thirty (30) days, nor more than six (6) months, or by both such fine and imprisonment. In addition to criminal penalties, the violator shall ~~also~~ be subject to denial, revocation, suspension, probation or

nonrenewal of certification by the Board. ~~Any person who assumes the title of registered veterinary technician, or the abbreviation RVT, or any other words, letters, signs, or figures that might induce a person to believe that the person using the name is a registered veterinary technician, when in fact they are not certified, upon conviction thereof shall be guilty of a misdemeanor.~~

~~D.~~ E. The penalties provided in subsection ~~C~~ D of this section shall not apply to a student enrolled in an accredited school of veterinary technology while the student is under the supervision of an instructor and is performing activities required as a part of the student's training.

~~E.~~ F. Any ~~licensed~~ veterinarian licensed in this state who ~~permitting~~ permits or ~~directing~~ directs a veterinary technician, veterinary technologist, veterinary nurse, aide or animal attendant to perform a task or procedure in violation of the provisions of the Oklahoma Veterinary Practice Act, upon conviction ~~thereof~~, shall be guilty of ~~a misdemeanor~~ aiding or abetting the unlicensed practice of veterinary medicine as prohibited by Section 698.18 of this title, and shall ~~also~~ be, in addition to any criminal penalties, subject to revocation, probation, nonrenewal or suspension of license by the Board.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 650.11 of Title 21, unless there is created a duplication in numbering, reads as follows:

Medical battery is a felony, upon conviction, punishable by imprisonment in the county jail for a term not more than one (1) year or imprisonment in the custody of the Department of Corrections for not more than four (4) years, and a fine in an amount not more than Five Thousand Dollars ($5,000.00). In addition, the defendant shall be ordered to make restitution to the victim in an amount determined by the court.

For purposes of this section medical battery means:

1. The defendant has been found guilty of practicing dentistry, medicine, osteopathic medicine, or surgery, without a license or authority as prohibited by the provisions of the State Dental Act, the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, or the Oklahoma Osteopathic Medicine Act;

2. The treatment, or course of treatment, practiced in violation of the provisions of the State Dental Act, the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, or the Oklahoma Osteopathic Medicine Act, resulted in the victim having permanent physical injury or disfigurement;

3. The victim consented to such treatment, or course of treatment, under a belief that the defendant was licensed and authorized to diagnose and perform the treatment; and

4. The defendant willfully performed the act knowing that such act was prohibited pursuant to law.

SECTION 7. This act shall become effective November 1, 2008."

Passed the Senate the 15th day of April, 2008.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2008.

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Presiding Officer of the House
of Representatives